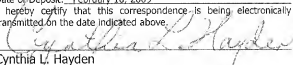


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
Oleg B. Rashkovskiy	§	Art Unit: 2623
	§	
Serial No.: 09/690,549	§	Examiner: Rueben M. Brown
	§	
Filed: October 17, 2000	§	Conf. No.: 2613
	§	
For: Storing Advertisements	§	Atty Docket: BKA.0006US
	§	
	§	

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Alexandria, VA 22313-1450

**APPEAL BRIEF**

Date of Deposit: February 16, 2009  
I hereby certify that this correspondence is being electronically  
transmitted on the date indicated above.  
  
Cynthia L. Hayden

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**REAL PARTY IN INTEREST**

The real party in interest is the assignee BlackArrow, Inc.

### **RELATED APPEALS AND INTERFERENCES**

Appeal No. 2007-0721, decided March 7, 2008, for this application.

### **STATUS OF CLAIMS**

Claims 1-46 (Canceled).

Claims 47-57 (Rejected).

Claims 47-57 are rejected and are the subject of this Appeal Brief.

### **STATUS OF AMENDMENTS**

A Petition was filed on December 10, 2008 in response to the office action mailed September 26, 2008.

## SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

47. A system comprising:

a receiver (10, Figure 1) to receive content, an advertisement (page 2, lines 15-22) and update instructions (page 6, lines 7-23) for said advertisement;

a cache (8, 30, Figure 1), coupled to said receiver, to store said content and said advertisement (page 3, lines 12-14; page 6, line 24-page 7, line 2); and

a shell (12, Figure 1), in said receiver, to find a place to insert the advertisement in the cached content before the cached content continues to be output for display (page 5, lines 14-20; page 7, lines 12-26), said receiver to receive an update for said advertisement and to automatically replace said advertisement with said update using said instructions (page 8, line 24-page 9, line 2; page 9, lines 11-19).

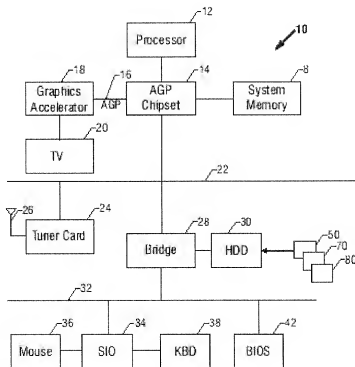


FIG. 1

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

- A. Whether claims 47-50 and 57 are unpatentable under 35 U.S.C. § 103(a) over Khoo in view of Rosser and Jernigan.
- B. Whether claims 51-53 are unpatentable under 35 U.S.C. § 103(a) over Khoo, Rosser and Jernigan, and further in view of Payton.
- C. Whether claims 55-56 are unpatentable under 35 U.S.C. § 103(a) over Khoo, Rosser, and Jernigan, and further in view of Ebisawa.
- D. Whether claims 47-57 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

## **ARGUMENT**

**A. Are claims 47-50 and 57 unpatentable under 35 U.S.C. § 103(a) over Khoo in view of Rosser and Jernigan.**

The newly cited references are deficient in the same way as the previously cited references. See Decision on Appeal No. 2007-0721. The newly cited reference to Jernagen is totally devoid of any instructions for updating. Instead, there are no instructions in Jernagen at all. All Jernagen does is simply plug the advertisements in. After he updates the advertisements, he just plugs them in periodically.

But the application and the claims require that there be instructions for updating. There are no instructions that are received by the receiver for updating. They just receive the advertisement. The importance of this limitation is explained in the Decision on Appeal at page 3. There, it is explained that the instruction indicates when to perform the updating operation. Moreover, the Board notes that the specification distinguished updated advertisements from an entirely new replacement advertisement. Jernagen merely teaches replacing the existing advertisements with replacement advertisements, but he provides no instructions whatsoever for doing so. Therefore, the rejection is deficient for reasons already explained by the Board.

**B. Are claims 51-53 unpatentable under 35 U.S.C. § 103(a) over Khoo, Rosser and Jernigan, and further in view of Payton.**

For the reasons set forth above, these rejections should be reversed.

**C. Are claims 55-56 unpatentable under 35 U.S.C. § 103(a) over Khoo, Rosser, and Jernigan, and further in view of Ebisawa.**

For the reasons set forth above, these rejections should be reversed.

**D. Do claims 47-57 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph.**

The law is clear that the exact same words do not need to be used in the specification and the claims. See M.P.E.P. § 2163.02 (no need to use the same words in the specification and claims). That is the sole and total basis for the belated and improper Section 112 rejection.

Therefore, the rejection should be reversed.

\* \* \*

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: February 16, 2009



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## **CLAIMS APPENDIX**

The claims on appeal are:

47. A system comprising:  
a receiver to receive content, an advertisement and update instructions for said advertisement;  
a cache, coupled to said receiver, to store said content and said advertisement; and  
a shell, in said receiver, to find a place to insert the advertisement in the cached content before the cached content continues to be output for display, said receiver to receive an update for said advertisement and to automatically replace said advertisement with said update using said instructions.

48. The system of claim 47 said receiver to receive said update with a pointer, said receiver to use said pointer to store said update at a location.

49. The system of claim 48 wherein said receiver to receive content interrupted by said advertisement, said receiver to provide a marker in said content to indicate where said advertisement should be inserted, said pointer provided with said marker.

50. The system of claim 49 wherein said receiver to identify said marker in said cached content and use said pointer to locate an advertisement stored in the location indicated by said pointer.

51. The system of claim 47 wherein said receiver to receive content interrupted with said advertisement, said receiver to determine whether said advertisement was previously stored.

52. The system of claim 51 wherein said receiver to maintain a list of stored advertisements and to compare information about a particular advertisement to information on said list of stored advertisements to determine whether said particular advertisement was previously stored.

53. The system of claim 52 wherein said receiver to store said advertisement only if the advertisement was not previously stored.

54. The system of claim 52 wherein said receiver to upload said list of stored advertisements along with said pointers to a remote server.

55. The system of claim 47 wherein said receiver to receive information about when to update said advertisement and automatically update said advertisement in accordance with said information.

56. The system of claim 55 wherein said receiver periodically, automatically update advertisements.

57. The system of claim 47 wherein said system is a set-top box.

## **EVIDENCE APPENDIX**

None

**RELATED PROCEEDINGS APPENDIX**

None